Supreme Court of the United States

OCTOBER TERM, 1944

No. 995

SIMON METRIK,

Petitioner,

against

FORT TRYON GARDENS, INC.,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO APPLICATION TO ASSESS PRINTING COSTS AGAINST IT

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104 GROSBY PRESS, INC., 30 Ferry St., N. Y. C.—BEekman—3-2336-7-8

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The petitioner has presented to this Court a petition in support of an application for rehearing of his petition for a writ of certiorari which was heretofore denied.

In connection with that application he seeks to charge respondent with one-half of the cost of printing the record pursuant to Rule 13, subdivision 9 of the Rules of this Court on the ground that such one-half was unnecessarily caused to be printed. This brief is directed solely to the issue of whether or not one-half of such printing costs should be charged against respondent. This portion of the record consists of the testimony on the hearing to determine whether or not the petitioner was given the two hour notice required by the New York statute (R. 17-57). However,

no facts whatsoever are set forth in the petition or in the brief to support the conclusory statement that the printing of this testimony was unnecessary.

Prior to the printing of the record, petitioner sought a stipulation under which the entire testimony was to be omitted from the record, and in its place substituted merely the statement that a hearing on the traverse was held and was decided in favor of the respondent.

It is obvious, as will hereafter be demonstrated, that the original petition for a writ of certiorari could have not been properly opposed unless this testimony was printed and the facts contained therein brought to this Court's attention.

Under Point III of our original brief in opposition to the petition (pp. 12-19) we contended that the two hour notice provided by Sections 1419 and 1421 of the Civil Practice Act was a reasonable exercise of police power by the State Legislature; and that the notice provided therein was reasonable under the special circumstances and purposes for which those sections were enacted. In order to establish that the two hour notice afforded the petitioner reasonable opportunity to get to the courthouse, the testimony sought to be eliminated by the petitioner conclusively established the distance from the petitioner's home to the courthouse, and the time it took to reach that courthouse (R. 25-28).

In addition, this testimony was most vital for it showed that the respondent did not "swoop down" upon petitioner on September 15th, 1943 on a mere two hours' notice, but that since as early as June 1943, petitioner knew that respondent had leased the very apartment occupied by him

to another tenant under the terms of a written lease commencing on September 15th, 1943; and that from June through September, 1943 petitioner was notified orally and by mail that he would have to vacate the premises on September 15th, 1943 (R. 41-43).

Under Point II of our brief in opposition to the petition, we argued that it should be dismissed since a moot question was presented (pp. 10-11). The undisputed facts are that the petitioner's lease expired on September 14th, 1943, and that in the State courts he claimed an oral renewal of one year which, if successful, would have entitled him to possession until September 14th, 1944. It thus became abundantly clear that at the time of the presentation of the petition, the petitioner could have no possible claim to possession of the apartment since any possible rights to such possession expired on September 14th, 1944.

Moreover, it was uncontradicted that a Mr. Bonnfeld was in possession of those premises under a written lease which commenced on September 15th, 1943 and could not be ousted.

Finally, it was uncontradicted that the petitioner had since September 15th, 1943 occupied other premises at 924 West End Avenue under a written lease which expired on September 30th, 1945, and that he did not need the apartment in respondent's building. All of these facts were contained in the testimony which was conveniently sought to be eliminated by petitioner (R. 41-43).

Finally, it was most necessary to print all of this testimony to conclusively show that no substantial Federal question was presented by the petitioner.

CONCLUSION

The application to assess printing costs against respondent and for a rehearing should be denied.

Respectfully submitted,

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